

REMARKS

A. Status of the Claims

Claims 1-6, 12-17, 21-23, 25-31, 33, 35-37, 39, 40, 46, 49-52, 56, 59, 61, 63, 64, 91, 188-193, and 199-201 were pending in the case at the time of the Election/Restriction Requirement.

B. Response to Restriction Requirement

In response to the Restriction Requirement, Applicants hereby elect the Group I invention, which pertains to a method for modulating cell death in a cell comprising contacting said cell with an Spi2A polypeptide, wherein the cell is a human patient with an infection, classified in class 514, subclass 2.

Regarding the Restriction Requirement, Applicants request the inclusion of Groups II-XXXIII and XXXV with the Group I invention. *MPEP* §803 provides that “[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits.”

As to Groups XXIII – XXXIII and XXXV, each of the groups is drawn to the amino acid sequences MAGVGCCA or FVVAECCM. Applicants point out that MAGVGCCA is part of the amino acid sequence of Spi2A. *See* specification, page 21, lines 23-26. Searching of Spi2A and MAGVGCCA can thus be made without serious burden on the Examiner.

Further, Applicants point out that a prior art search directed to Spi2A can be easily structured to include a search of Spi2A polypeptide equivalents. Further, each of the diseases set forth in the groups (e.g., infection, septic shock, hepatic failure, etc.) can be easily combined together in a single search string.

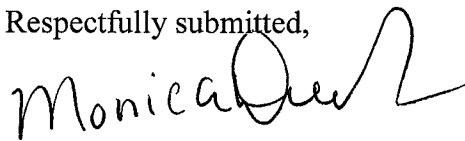
Regarding the election requirement, it appears to Applicants that in view of the election of Group I, that Applicants are not required to elect a single disclosed Spi2A polypeptide equivalent for prosecution on the merits at this time since Applicants have elected Group I. Regarding the election from among MAGVGCCA or FVVAECCM, Applicants elect MAGVGCCA, which, as set forth above, is part of Spi2A.

By arguing for the inclusion of Groups II-XXXIII and XXXV with Group I, Applicants draw no conclusion or make any admission regarding whether these sets of claims are patentably distinct from one another. Applicants reserve the right to separately prosecute these sets of claims, should the groups of "inventions" as set forth in the Restriction Requirement be maintained by the Examiner.

Therefore, for the reasons set forth above, each of the claims set forth in Groups I-XXXIII and XXXV should be included for prosecution on the merits. The claims that are included in these groups include claims 1-6, 12-17, 21-23, 25-31, 33, 35-37, 39, 40, 46, 49-52, 56, 59, 61, 63, and 64. The remaining claims (*i.e.*, claims 91, 188-193, and 199-201) have been canceled from the case.

The Examiner is invited to contact the undersigned attorney at (512) 536-5639 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Monica De La Paz", with a stylized flourish at the end.

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Date: July 14, 2006